

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

J. WALTER THOMPSON PUERTO RICO INC.

Plaintiff

v.

LATIN AMERICAN MUSIC COMPANY, INC.,
ACEMLA DE PUERTO RICO, INC.,
PEER INTERNATIONAL CORPORATION OF
PUERTO RICO

Defendants

CIVIL NO. 17-1094

COMPLAINT FOR INTERPLEADER

TO THE HONORABLE COURT:

COMES Now Plaintiff, through undersigned legal representation, and very respectfully STATES,
ALLEGES and PRAYS:

INTRODUCTION

This is an action for Interpleader, in order to settle competing ownership claims by defendants over a composition related to a synchronization license requested by Plaintiff.

JURISDICTION AND VENUE

Federal jurisdiction is conferred by 28 USCS § 1331 and 28 U.S.C. § 1338(a) since the matter in controversy arises under the U.S. Copyright Act. Venue of this action properly lies in this district pursuant to 28 USC § 1391 because the events giving rise to the claims occurred in this

jurisdiction. This Court has personal jurisdiction over the Defendants in this action because they are each doing business in the Commonwealth of Puerto Rico.

THE PARTIES

1. Plaintiff J Walter Thompson Puerto Rico, Inc. is an advertising company created and existing under the laws of the Commonwealth of Puerto Rico, authorized to do business in the Commonwealth of Puerto Rico, with offices located at Calle C, Ste. 791, Urb. Mario Julia, San Juan, Puerto Rico 00922 and telephone number 787 781-1616.

2. Defendant LATIN AMERICAN MUSIC COMPANY, INC. (hereinafter referred to as “LAMCO”) is a music publisher and sub-publisher incorporated in the state of New York, with its principal place of business at 508 Calle Ana Roque Duprey, Hato Rey, Puerto Rico, 00918.

3. Defendant ACEMLA DE PUERTO RICO, INC. (hereinafter referred to as “ACEMLA”), a performing rights society, is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, with its principal place of business at 508 Ana Roque Duprey St., Hato Rey, San Juan, Puerto Rico.

4. Defendant PEER INTERNATIONAL CORPORATION OF PUERTO RICO, a music publisher, is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico, mailing address 901 West Alameda Avenue, Suite 108, Burbank, California 91506 (hereinafter referred to as Peer Music).

THE FACTS

5. Plaintiff J Walter Thompson is an advertising agency that produces advertising campaigns for its clients in Puerto Rico.

6. J Walter Thompson contacted Hi-Glo Music Publishing, a vendor for Peer Music in Puerto Rico, and licensed the use of the composition “Llegó la Navidad” for the Walgreens Christmas campaign. Said license identified Peer Music as the holder of the rights to the composition “Llegó la Navidad” by Raul Balseiro.

7. As part of the services provided to its client Walgreens, J Walter Thompson contractually agreed to hold harmless, indemnify, and defend, Walgreens from any and all claims presented by third parties regarding copyright claims that arise from the services provided by J Walter Thompson.

8. As part of the services provided to its client Walgreens, J Walter Thompson created a campaign for the Christmas 2016 season that made use of the musical composition “Llegó la Navidad” written by Raúl Balseiro.

9. Shortly after the Christmas campaign created by J Walter Thompson began airing, Defendants LAMCO and ACEMLA informed Walgreens that the campaign was an infringing use of its composition “Llegó la Navidad” since they “have the exclusive rights of ‘Llegó la Navidad’ from our composer Raul Balseiro, the infringement was executed and we have the evidence.” Defendants LAMCO and ACEMLA requested “all the details of the campaign, like budget, all media venues and advertising schedule” for the campaign.

10. On or around the 29th of November, 2016, Walgreens directed LAMCO and ACEMLA to address their complaints to J Walter Thompson.

11. On December 8th, 2016, the J Water Thompson’s Radio & TV Executive Producer that handled the Christmas campaign informed a representative of defendants LAMCO and

ACEMLA that J Water Thompson had procured a valid license from Peer Music's vendor Hi-Glo Music Publishing.

12. Upon information and belief, shortly after this conversation, LAMCO and ACEMLA again contacted Walgreens, imputing copyright infringement for the use of the composition in the campaign and inside the stores.

13. In an attempt to resolve the controversy, J Walter Thompson requested and received evidence of Peer Music's rights over the composition "Llegó la Navidad" by Raul Balseiro.

14. J Walter Thompson received copy of: (a) an Agreement dated 26th of October 1992, between Peer International Corporation of Puerto Rico and Raul Balseiro Rivas whereby Balseiro "sells, assigns, transfers and delivers..." all rights, title and interest in and to the work "Llegó la Navidad" to Peer International Corporation of Puerto Rico; (b) Certificate of Registration from the U.S. Copyright Office – PA1-115-059 with effective date of registration of October 30, 2002; and (c) a Certificate of Recordation of an Assignment dated September 15, 2002.

15. Said documents were forwarded to LAMCO and ACEMLA via email on December 12, 2016 together with a request that all matters pertaining to the use of the "Llegó la Navidad" be referred to J Walter Thompson's legal advisor and not to Walgreens.

16. On December 10, 2016, Peer Music informed J Walter Thompson's account director that they did have the rights over the composition and that they would seek to resolve the matter with LAMCO ACEMLA.

17. On December 19th, 2016, LAMCO and ACEMLA, disregarding the December 12 email sent by J Walter Thompson's counsel, again contacted Walgreens directly attaching a copy

of Copyright Certificate Pau-2-452-447 for “Llegó la Navidad” by Raul Balseiro and seeking to enter into settlement negotiations to resolve the infringement. They also attached an Opinion and Order issued on a civil case in which the ownership of the composition was disputed as evidence of a case in which they had won with the same composer, the same composition and a similar advertising campaign.

18. J Walter Thompson’s counsel examined the Opinion and Order and found that it did not contain the alleged holding. If anything, the Opinion and Order cited by LAMCO ACEMLA confirmed that there was a conflict.

19. On December 20th, 2016, J Walter Thompson again responded to LAMCO ACEMLA on Walgreen’s behalf, stating that the conflict between the rights claimed by them and by Peer that should be resolved between themselves.

20. As of this date, neither Peer Music nor LAMCO ACEMLA have taken any action amongst themselves in order to clarify the ownership of the copyright in the composition “Llegó la Navidad” claimed by both.

21. J Walter Thompson has withheld the disbursement of the five thousand five hundred dollar (\$5,500.00) licensing fee quoted by Hi-Glo Music Publishing on behalf of Peer Music until the matter is resolved between the competing defendants to this action.

22. Because of the competing ownership claims, J Walter Thompson is exposed to multiple liability.

**FIST CAUSE OF ACTION
INTERPLEADER**

23. Fed. R.Civ P. 22 states that persons with claims that may expose a plaintiff to double or multiple liability may be joined as defendants and required to interplead.

24. Defendants LAMCO ACEMLA on the one hand and Peer Music on the other, claim to have exclusive rights under U.S. Copyright law to the composition “Llegó la Navidad” by Raul Balseiro.

25. Plaintiff contracted with one of the defendants for the use of the work while other defendants is claiming copyright infringement for the use of the same work, claiming, as does the other defendant, to be the rightful owners of the same work.

26. Defendants should be forced to establish which transfer prevails and therefore which defendant is entitled to claim the copyrights over the composition used by J Walter Thompson.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court order the defendants to interplead and resolve conflicting ownership claims over the composition “Llegó la Navidad” by Raul Balseiro.

In San Juan, Puerto Rico, this 23rd of January, 2017.

s/ José A. Hernández Mayoral

José A. Hernández Mayoral

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